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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment to Section 1.773 of)
the Commission's Rules Regarding) CC Docket No. 92-117
Pleading Cycle for Petitions)
Against Tariff Filings Made)
on 14 Days' Notice)

ORIGINAL
FILE

COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its comments regarding the Commission's proposals to revise its rules to establish shorter filing periods for petitions and replies related to tariff filings made on less than 15 days notice.

As the Commission observes, under its present rules the time periods provided for filing petitions and replies related to tariff filings made on less than 15 days notice results in insufficient time for consideration of such pleadings by the Commission prior to the scheduled effective date of such tariff filings. Petitions are to be filed no later than 7 days (including holidays) after the tariff is filed, and replies are to be filed no later than 4 days after petitions are filed (excluding holidays) with an additional three days added (including holidays) where the petition is served by mail. Under these provisions, the conclusion of the pleading cycle for such tariff filings (where service of the petitions is by mail) will always

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occur on or after the scheduled effective date, depending upon which day of the week the tariff filing is made.

The Commission proposes revisions to its rules which include changing the file dates and service requirements. Petitions would be required to be filed no later than 6 days (including holidays) after the tariff is filed, and replies would be required to be filed no later than 3 days (including holidays) from the date on which petitions are filed. No additional days for filing replies would be allowed for service by mail, and, in fact, petitions would be required to be "personally served." BellSouth comments on these proposals below, and then provides additional suggestions regarding more minor aspects of the Commission's proposed rule changes.

I. CHANGES IN FILE DATES AND PERSONAL SERVICE

BellSouth does not oppose the proposed changes in filing dates, as long as the requirement for personal service of petitions is imposed. However, the rules should specify that the personal service must be made on the filing carrier, at the location and on the individual designated by the filing carrier and within the normal business hours of the filing carrier.

To merely require that petitions be "personally served" on the filing carrier is too broad. Such a rule could be interpreted as allowing service upon any representative of the filing carrier at any location regardless of whether

such representative has any responsibility for responding to petitions against tariff filings. Such service could result in prejudicial delays. Many carriers, such as BellSouth, have offices established in Washington, D.C. for the specific purpose, inter alia, of facilitating the receipt and circulation of documents to their appropriate locations within the Company. The rule, therefore, should be modified to allow filing carriers to designate the individual and location to be served and to require that personal service be made accordingly, as long as the location is either in Washington, D.C. or is served by a same-day normal business hour commercial personal delivery service. If not so served, personal delivery could be unreasonably inconvenient and expensive, depending upon the location. The designation of the individual and office location upon which personal service of the filing carrier must be made should be specified by the filing carrier in the transmittal letter accompanying the tariff filing.

In order to accomplish the foregoing, Sections 61.33(a) and 1.773(a)(4) should be modified. Section 61.33(a) should be revised by adding a new subsection (5) as follows:

Section 61.33(a)....(5) contain the name, room number, street address, and telephone number of the individual designated by the filing carrier to receive personal service of petitions regarding the filing under Section 61.773(a)(4) and the normal business hours of such location. The location either must be in Washington, D.C. or must be served by a same-day normal business hours personal delivery service.

Section 1.773(a)(4) should be modified by adding the following new language at the end.

Section 1.773(a)(4)....Personal service of the petition on the filing carrier shall be accomplished by delivering the petition to the representative and office location designated by the filing carrier in the transmittal letter accompanying the tariff filing within the normal business hours of the carrier as stated therein on the same date on which the petition is filed.

The importance of accurate and timely personal service cannot be overemphasized. Reducing the time period for filing replies to three days (including holidays), as the Commission proposes, will mean that the filing carrier will have a minimal amount of time to prepare its reply.¹ Given the short period of time, it is essential that the rules require that service of the petitions be made on the same day as the petitions are filed, as the proposed rule presently states, and by personal delivery to the location and individual specified by the filing carrier. In that there could potentially be problems in the actual personal delivery of the petitions on the same date on which the petition is filed with the Commission, the filing date for replies is correctly proposed to run not from the date of filing of the petitions, per se, but from the date on which personal service is actually accomplished.

¹ The exact number of business days will depend upon the day of the week on which the petitions are filed, the presence of weekends and other holidays during the days following filing of the petitions, and the manner in which service of the petitions is accomplished.

The Commission has requested comment upon whether service by facsimile ("FAX") should be allowed as a substitute to personal delivery of petitions and replies. BellSouth acknowledges that the availability of FAX technology could allow for even more rapid and efficient delivery of pleadings to the filing carrier and petitioners than personal delivery to a designated location. However, additional protective mechanisms would need to be built into any rule permitting service by FAX. Despite the considerable contribution which facsimile technology has made to the transfer of information, there can be problems. A sender of a FAX message may not always get a confirmation that the FAX sent was delivered as instructed. Or, in some cases, confirmation can be provided by the FAX equipment even though the delivery was not actually made or was incomplete. In addition, facsimile machines, from time to time, can break down. Whereas the sender will know that he is attempting to transmit a FAX, the recipient will not know that he has missed receiving a FAX if he did not know to expect it to begin with. It is therefore essential that there be some direct communication between the entity attempting to serve by FAX and the entity being served by FAX to assure that the service in fact is accomplished in complete form. Therefore, if the Commission intends to permit a petitioner to utilize FAX for the purpose of personal service, the Commission should require the

petitioner to call the individual designated by the filing carrier to accept service, to inform that individual that a FAX is being sent, the number of pages included, and to provide a call-back number for the filing carrier's use in the event of problems. If the Commission deems it appropriate to allow for personal service by FAX, therefore, the following modifications to Sections 61.33(a) and 1.773(a)(4) would be required in lieu of those set forth on the previous page. Section 61.33(a) should be modified to add a new Section 5 as follows:

61.33(a)....(5) contain the name, room number, street address, telephone number and facsimile number of the individual designated by the filing carrier to receive personal service of petitions regarding the filing under Section 61.773(a)(4) and the normal business hours of such location. The location either must be in Washington, D.C. or must be either served by a same day normal business hours personal delivery service or by facsimile.

Section 1.773(a)(4) should be modified by adding the following language at the end:

1.773(a)(4)....Personal service of the petition on the filing carrier shall be accomplished by delivering the petition to the representative and office location designated by the filing carrier in the transmittal letter accompanying the tariff filing within the normal business hours of the carrier as stated therein on the same date on which the petition is filed by (i) personal delivery to such individual or his agent at such office location or (ii) facsimile transmission to such individual at the FAX number indicated in the transmittal letter. In order for personal service to be considered to be accomplished by facsimile transmission in accordance with this rule, (1) the facsimile received must be legible and complete; and (2) the petitioner must, concurrent with the transmittal of the petition by facsimile, telephone the designated representative at the telephone number indicated in the transmittal letter to advise that a

facsimile of a petition is being sent, and to provide the transmittal number of the tariff filing to which the petition is addressed, the number of pages being transmitted, and a call-back number for the filing carrier's use.

The Commission is proposing modifications to the service requirements not only for petitions but also for replies to those petitions. The Commission suggests that personal service, rather than service by mail, be required of all replies in cases involving tariff filings made on less than 15 days notice. BellSouth believes that service by mail is sufficient in these instances, as the Commission's rules do not permit a response by petitioners to replies. The urgency which exists with respect to the receipt of petitions simply does not exist in the case of receipt of replies. However, if the Commission does require personal service, in lieu of service by mail, Sections 1.773(a) and (c) [sic: 1.773(b)(3)]² should be modified in a manner analogous to the modifications proposed by BellSouth for Sections 61.33(a) and 1.773(a)(4). Section 1.773(a) should be revised as follows:

1.773(a)....The petition shall also include the name, office address, telephone number and facsimile number of the designated individual upon which personal service of replies to the petition may be made, in accordance with Section 1.773(b)(3), and the normal business hours of such location. The location either must be in Washington, D.C. or must be served by either a same day normal business hours personal delivery service or by facsimile.

² As discussed in Section II below, Section 61.773(c) should be renumbered 61.773(b)(3).

Section 1.773(c) [sic: 1.773(b)(3)] should be by adding the following language at the end, as follows:

Personal service of the reply on the petitioner shall be accomplished by delivering the reply to the representative and office location designated by the petitioner in the petition within the normal business hours of the petitioner as stated therein on the same date on which the reply is filed by (i) personal delivery to such individual or his agent at such office location or (ii) facsimile transmission to such individual at the facsimile number indicated in the transmittal letter. In order for personal service to be considered to be accomplished by facsimile transmission in accordance with this rule, (1) the facsimile received must be legible and complete; and (2) the petitioner must, concurrent with the transmittal of the reply by facsimile, telephone the designated representative at the telephone number indicated in the petition to advise that a facsimile of a reply is being sent, and to provide the transmittal number of the tariff filing to which the reply is addressed, the number of pages being transmitted, and a call-back number for the petitioner's use.

II. MISCELLANEOUS.

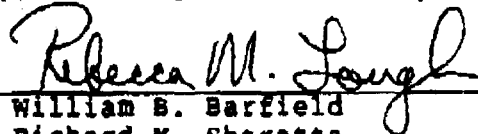
Two small but important clerical revisions should be made to the revised rule. First, the reference in Section 1.773(a)(2) to the service of petition "in accordance with Section 1.773(c)" should be revised to refer to the new proposed section regarding the service of petition, Section 1.773(a)(4). In addition, the existing Section 1.773(c) (which presently addresses service and copies for both petitions and replies) should be renumbered as Section 1.773(b)(3), to reflect the fact that, as revised, Section 1.773(a) will address all requirements related to petitions, including service and copies in Section 1.773(a)(4), and Section 1.773(b) will address all requirements related to

replies, including service and copies in Section
1.773(b)(3).

Respectfully submitted,

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